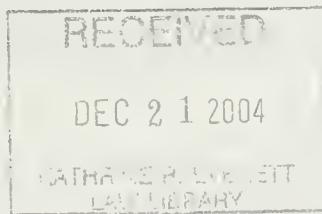
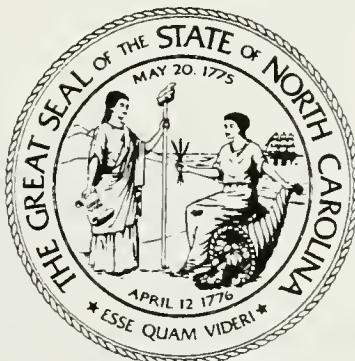


JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE



*REPORT TO THE
2004 REGULAR SESSION OF THE
2003 GENERAL ASSEMBLY
OF NORTH CAROLINA*

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May 10, 2004

TO THE MEMBERS OF THE 2004 REGULAR SESSION OF THE
2003 GENERAL ASSEMBLY

Pursuant to G.S. 120-70.62(8), the Joint Legislative Commission on Seafood and Aquaculture submits its report and recommendations to the 2004 Regular Session of the 2003 General Assembly.

Respectfully submitted,

~~Senator Charles W. Albertson~~

Representative William L. Wainwright

Cochairs

MEMBERSHIP

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE 2003-2004

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AUTHORIZING LEGISLATION

ARTICLE 12F.

Joint Legislative Commission on Seafood and Aquaculture.

§ 120-70.60. Commission established.

The Joint Legislative Commission on Seafood and Aquaculture is hereby established as a permanent joint committee of the General Assembly. As used in this Article, the term "Commission" means the Joint Legislative Commission on Seafood and Aquaculture.

§ 120-70.61. Membership; cochairmen; vacancies; quorum.

The Joint Legislative Commission on Seafood and Aquaculture shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate; four Representatives appointed by the Speaker of the House of Representatives; four members appointed by the Governor; and three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Vacancies occurring on the Commission shall be filled in the same manner as initial appointments. A quorum of the Commission shall consist of eight members.

§ 120-70.62. Powers and duties.

The Commission shall have the following powers and duties:

- (1) To monitor and study the current seafood industry in North Carolina including studies of the feasibility of increasing the State's production, processing, and marketing of seafood;
- (2) To study the potential for increasing the role of aquaculture in all regions of the State;
- (3) To evaluate the feasibility of creating a central permitting office for fishing and aquaculture matters;
- (4) To evaluate actions of the Marine Fisheries Division of the Department of Environment and Natural Resources, the Wildlife Resources Commission of the Department of Environment and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;
- (5) To make recommendations regarding regulatory matters relating to the seafood and aquaculture industries including, but not limited to:
 - a. Increasing the State's representation and decision-making ability by dividing the State between the Atlantic and South Atlantic regions of the National Division of Marine Fisheries; and
 - b. Evaluating the necessity to substantially increase penalties for trespass and theft of shellfish and other aquaculture products;
- (6) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the seafood and aquaculture industries;

- (7) To review existing and proposed State law and rules affecting the seafood and aquaculture industries and to determine whether any modification of law or rules is in the public interest;
- (8) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and
- (9) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, or the Joint Legislative Commission on Governmental Operations, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate.

§ 120-70.63. Additional powers.

The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

§ 120-70.64. Compensation and expenses of members.

Members of the Commission shall receive per diem and travel allowances in accordance with G.S. 120-3.1 for members who are legislators, and shall receive compensation and per diem and travel allowances in accordance with G.S. 138-5 for members who are not legislators.

§ 120-70.65. Staffing.

The Legislative Services Officer shall assign as staff to the Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Commission through the Offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Commission.

§ 120-70.66. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Seafood and Aquaculture.

COMMITTEE PROCEEDINGS

During the interim between the 2003 Regular Session of the 2003 General Assembly and the convening of the 2004 Regular Session of the 2003 General Assembly, the Joint Legislative Commission on Seafood and Aquaculture met three times. Following is an agenda and a brief description of the proceedings of each meeting.

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

10:00 a.m. Tuesday, September 30, 2003
Division of Marine Fisheries
3441 Arendell Street
Morehead City, North Carolina

On Tuesday, September 30, 2003, the Joint Legislative Commission on Seafood and Aquaculture (Commission) met at the Main Office of the Division of Marine Fisheries of the Department of Environment and Natural Resources. The Commission proceeded to tour eastern Carteret County, North Carolina, to view the damage caused by Hurricane Isabel. The Commission met with local commercial fishermen to hear their concerns regarding the availability of unemployment benefits, gear damage, and the impact on marine resources.

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

10:00 a.m. Wednesday, October 1, 2003
Room 1, Crystal Coast Civic Center

1. Call to order
Senator Charles Albertson, presiding
2. Introductory remarks by Cochairs
Representative William Wainwright
Senator Charles Albertson
3. Report to the Commission
Jeff Hudson, Commission Counsel
4. Annual report on progress in developing and implementing Coastal Habitat Protection Plans
Preston Pate, Director
Division of Marine Fisheries, DENR

5. Annual report on progress in developing and implementing Fishery Management Plans
Preston Pate, Director
Division of Marine Fisheries, DENR
6. Report on initiatives and legislative proposals of the Division of Marine Fisheries
Preston Pate, Director
Division of Marine Fisheries, DENR
7. Commission discussion and announcements
8. Adjourn

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

10:00 a.m. Wednesday, October 1, 2003
Room 1, Crystal Coast Civic Center

The Joint Legislative Commission on Seafood and Aquaculture (Commission) met at 10:00 a.m. on Wednesday, October 1, 2003, at the Crystal Coast Civic Center in Morehead City, North Carolina. The legislative members present were Representatives Wainwright and Stiller and Senators Albertson, Sloan, Swindell, and Thomas. Public members present were Mr. Currin, Mr. Daniels, Mr. Swartzenberg, and Mr. Schill. Staff members present were Mr. Hudson, Mr. Givens, Mr. Dodge, Ms. McGinnis, and Ms. Brooks.

Senator Albertson, presiding Cochair, called the meeting to order and welcomed members and guests. Senator Albertson asked members to introduce themselves. Representative Wainwright also welcomed everyone to the meeting. Mr. Jeff Hudson, Commission Counsel, presented his report to the Commission.

Mr. Preston Pate, Director of the Division of Marine Fisheries, Department of Environment and Natural Resources, reported to the Commission on the impacts of Hurricane Isabel on marine resources. Mr. Pate explained that the Division of Marine Fisheries (Division) has not yet determined the total amount of commercial gear losses. He also explained that it will be difficult to determine the cost of fish kills, especially for juvenile fish, and their affect on future harvests.

Mr. Pate presented the annual report on progress in developing and implementing Coastal Habitat Protection Plans (CHPPs). Representative Stiller asked if the lack of funding from the General Assembly was a problem for CHPP development. Mr. Pate told members that the Division had not received the amount of funds anticipated and requested and that this was the reason the Division had requested and received an extension of the deadline for CHPP development. Representative Stiller reiterated the importance of having the funds and resources necessary to complete the CHPPs in a timely manner.

Mr. Pate presented the annual report on progress in developing and implementing Fishery Management Plans (FMPs). He explained the parameters of the flounder season and the two different types of flounder, Southern or "fluke" and summer flounder. He explained that the Shrimp Fishery Management Plan (Shrimp FMP) was originally scheduled to be completed in the next 2 or 3 years. Representative Stiller expressed concern about the delay in the completion of the Shrimp FMP and stated that its development and completion should be expedited. Mr. Pate explained that the original Blue Crab FMP had been completed and will be reviewed. Mr. Swartzenberg expressed concern that legislation implementing proposals in the Oyster and Hard Clam FMPs had not been enacted.

Mr. Pate presented several legislative proposals and background information to the Commission for its consideration. He expressed the hope that the Commission would have time in the future for a more detailed review of the proposals. The proposals were on the following topics:

1. Recommendations from the Oysters and Hard Clam FMPs
2. Violation Points System
3. Expanded Authority for Marine Inspectors
4. Dual Office Holding for Marine Inspectors
5. Proposed Alternative to the Maximum Sustainable Yield Standard

Senator Sloan asked how much funding the State could expect to receive if Marine Inspectors are sworn in as federal fisheries officers. Mr. Pate explained that the amount varies from state to state; South Carolina gets approximately \$1,000,000 (one million dollars) and the smallest amount a participating state receives is approximately \$500,000 (five hundred thousand dollars). Mr. Pate showed a short video on the activities and duties of the Marine Inspectors.

Senator Albertson made final comments and announcements. He advised the Commission that the Cochairs would try to organize a couple of additional meetings before the legislative session begins in May 2004.

Mr. Swartzenberg commented on non-native oysters and explained why they won't work in our waters. He said we can do things with our native oysters and there are ways to do selective breeding on oysters. He hopes to see us address this issue in the future.

Representative Stiller spoke on enforcement issues. He was interested in the difference in salaries for the Marine Patrol, the Highway Patrol, and other law enforcement officers. He noted the importance of training and how we need to retain our experienced and qualified Marine Patrol personnel. Representative Stiller also expressed concern that although the violation points system had been discussed 3 years ago no action had been taken on it.

There was no further business and the meeting adjourned at 12:15 p.m.

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

9:30 a.m. Tuesday, March 2, 2004
Room 1, Crystal Coast Civic Center

1. Call to order
Representative William Wainwright, presiding
2. Introductory remarks by Cochairs
Representative William Wainwright
Senator Charles Albertson
3. Discussion of federal deputization of and dual office holding by Marine Fisheries Inspectors (legislative proposal)
Preston Pate, Director
Division of Marine Fisheries, DENR

William Hogarth, Director
National Marine Fisheries Service, National Oceanic and Atmospheric Administration,
United States Department of Commerce

Dale Jones, Chief
Office of Law Enforcement, National Marine Fisheries Service,
National Oceanic and Atmospheric Administration, United States
Department of Commerce
4. Discussion of expanded enforcement authority for Marine Fisheries Inspectors (legislative proposal)
Colonel Joseph Lynch, Chief
Law Enforcement Section, Division of Marine Fisheries, DENR
5. Discussion of resources needed by the Division of Marine Fisheries for the enforcement of marine fisheries laws
Preston Pate, Director
Division of Marine Fisheries, DENR
6. Discussion of the establishment of a Violation Points System for the revocation and suspension of marine fishing licenses (legislative proposal)
Preston Pate, Director
Division of Marine Fisheries, DENR
7. Review of and comment on draft Striped Bass Fishery Management Plan
Preston Pate, Director
Division of Marine Fisheries, DENR

Sara Winslow, District Manager
Northern District, Division of Marine Fisheries, DENR

LUNCH BREAK – Estimated for 12:00 p.m. to 1:15 p.m.

8. Annual report on expenditure of funds in the Shellfish Rehabilitation Program
Craig Hardy, Chief
Resource Enhancement Section, Division of Marine Fisheries, DENR
9. Report on the implementation of S.L. 2003-64 (Limit Shellfish Lease Area in Core Sound)
Mike Marshall, District Manager
Central District, Division of Marine Fisheries, DENR
10. Discussion of recommendations of the Shellfish Fishery Management Plans (legislative proposal)
Mike Marshall, District Manager
Central District, Division of Marine Fisheries, DENR
11. Report on research into non-native oyster species
Charles H. Peterson, Alumni Professor
Institute of Marine Sciences, University of North Carolina at Chapel Hill
12. Report on potential research into native oyster species
Ami E. Wilbur, Assistant Professor
Center for Marine Sciences, University of North Carolina at Wilmington
13. Commission discussion and announcements
14. Adjourn

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

9:30 a.m. Tuesday, March 2, 2004
Room 1, Crystal Coast Civic Center

The Joint Legislative Commission on Seafood and Aquaculture met at 9:30 a.m. on Tuesday, March 2, 2004, at the Crystal Coast Civic Center in Morehead City, North Carolina. The legislative members present were Representatives Wainwright, Gorman, and Stiller and Senators Albertson and Sloan. Public members present were Mr. Schill, Mr. Daniels, Mr. Swartzenburg, Mr. Smith, Mr. Blackerby, and Ms. West. Staff members present were Mr. Hudson, Mr. Givens, Mr. Dodge, Ms. McGinnis, and Ms. Davis.

Senator Albertson called the meeting to order and asked Mr. Blackerby, a new member appointed by the Governor, and Ms. West, who had missed the October 1, 2003 meeting due to Hurricane Isabel, to introduce themselves.

Mr. Preston Pate, Director of the Division of Marine Fisheries, Department of Environment and Natural Resources, presented the legislative proposal to authorize federal deputization of marine fisheries inspectors. Mr. William Hogarth, Director, National Marine Fisheries Service, spoke in favor of the legislative proposal. He explained that almost all eligible states and territories are operating under an agreement for the federal deputization of their marine law enforcement officers. He noted that North Carolina is one of the largest recreational fishing states in the country. He explained that this is not a federal take-over of State marine law enforcement, but a cooperative effort to ensure better compliance with marine resources laws. Mr. Dale Jones, Chief, Office of Law Enforcement, National Marine Fisheries Service, presented information on federal deputization agreements.

Senator Albertson announced that a vote on the legislative proposals would not be taken at this meeting so that members would have time to consider them.

Senator Sloan asked Mr. Pate if the legislative proposal became law, would it create new State restrictions. Mr. Pate responded that it would not.

Representative Gorman stated that the Commission needs more specific information before it votes on the legislative proposal. He would like to know how the federal money would be allocated: for more personnel, new equipment, etc. Mr. Pate explained that he couldn't be more specific because the Division of Marine Fisheries (Division) hasn't drafted an agreement. He said he would try to develop a model agreement for the Commission to review.

Senator Albertson asked Mr. Pate for a summary of the agreements that our neighboring states have entered into.

Ms. Susan West asked Mr. Pate if this would expand our enforcement into federal waters. Mr. Pate explained that it would.

Representative Wainwright asked how such an agreement would affect personnel needs. Mr. Pate explained that these needs would be identified and the Division would go through the usual hiring process. Representative Wainwright asked what would happen to a federally funded position if federal funding ends. Mr. Pate explained that if federal funding ends, that position would have to be reevaluated and possibly eliminated; however funds can sometimes be shifted from other places to continue supporting a position.

Mr. Schill told the Cochairs that having the next meeting in Raleigh may prevent some fishermen from attending and expressing their concerns regarding this legislative proposal. He also had several letters written in opposition to the legislative proposal.

Mr. Hogarth stated that if North Carolina were to enter into a cooperative agreement with the federal government, the State could expect to receive between five hundred thousand dollars (\$500,000) and one million dollars (\$1,000,000).

Mr. Blackerby asked if the states that have entered into these agreements have had any negative experiences. Mr. Hogarth responded that he knew of none. Mr. Blackerby asked if recreational fishermen in any of these states had lodged complaints about the agreements. Mr. Hogarth responded that he knew of none.

Representative Stiller asked about the duration of the agreements and whether a state could withdraw from its agreement. Mr. Jones explained that the State could withdraw at any time. Representative Stiller asked how many states have withdrawn from their agreements. Mr. Jones knew of no states that had withdrawn.

Representative Wainwright opened the floor to public comment on the legislative proposal. Ms. Pam Morris, a Carteret County resident, stated her opposition to the legislative proposal. Mr. Billy Carl Tillet, fish dealer, also stated his opposition to the legislative proposal. He said that there are already too many State and federal laws, that federal fines and penalties are out of control, that federal enforcement will distract us from enforcement of State laws, and that federal funding will end and the State will be hurt by the shortfall. Ms. Sandra Gaskill, a Harkers Island commercial fisherman, stated her opposition to the legislative proposal. Mr. Eddie Mullen, a commercial fisherman with Homer Smith Seafood, stated his opposition to the legislative proposal.

Colonel Joseph Lynch, Chief, Law Enforcement Section, Division of Marine Fisheries of the Department of Environment and Natural Resources, presented a legislative proposal to expand the enforcement authority of Marine Fisheries Inspectors. He explained that the Marine Patrol doesn't want additional law enforcement duties, but it can sometimes take hours if they have to detain someone while waiting for officers with broader jurisdiction to arrive. He explained that under the expanded enforcement authority,

Marine Fisheries Inspectors could arrest for underage drinking and boating while intoxicated and could assist local governments during natural disasters.

Representative Wainwright asked what type of assistance the Marine Patrol would provide to other law enforcement agencies or local governments and would the Marine Patrol have sufficient manpower to do this and adequately perform its existing duties. Colonel Lynch cited the use of the Division's helicopter in locating a bank robber as an example of the type of assistance the Marine Patrol has provided. Representative Wainwright said there seemed to be some confusion because he thought expanded powers would be restricted to marine patrol issues, not assisting other agencies with regular law enforcement duties.

Senator Albertson asked for clarification about the different levels of training for Marine Fisheries Inspectors and Wildlife Protectors. Colonel Lynch explained that both types of officers are required to hold a basic law enforcement training certificate. He noted that Protectors also undergo 6 months of additional training at an extended recruit school, while the Inspectors undergo 3 months of additional field training.

Mr. Swartzenburg expressed concern that expanded enforcement authority might impact the ability of Marine Fisheries Inspectors to fulfill their regular marine fisheries duties. Colonel Lynch explained that the expanded enforcement authority would require no additional training. The expanded enforcement authority would enable the Marine Fisheries Inspectors to perform more public safety duties instead of calling on and waiting for traditional law enforcement officers. Colonel Lynch explained that he is confident that his staff is just as qualified and capable as Wildlife Protectors.

Mr. Smith asked if the expanded enforcement authority would allow the Marine Fisheries Inspectors to stop people for traffic violations. Colonel Lynch explained that his staff would not be out looking for traffic violators. Mr. Smith stated that he feels this proposal needs more study. He described an incident where he observed a Marine Fisheries Inspector pull over a vehicle and he is concerned that an aggressive officer may take advantage of his authority. Colonel Lynch assured the Commission that his staff would answer to him if they acted improperly and he does not believe this would be a problem with his officers.

Mr. Schill asked if Division staff had met with representatives of the Sheriff's Association to address their concerns. Colonel Lynch explained that the meeting had taken place and everything had been resolved.

Representative Wainwright told Colonel Lynch that the Commission needs more specific information about what the Division intends to do with the additional enforcement authority.

Mr. Pate explained that the expanded enforcement authority would not change the priorities of the Division or its Law Enforcement Section. He stated that if there was an

issue of overly aggressive enforcement, this was a management problem that he and Colonel Lynch would address.

Representative Gorman asked how many situations the Marine Patrol has encountered where lack of certain enforcement authority has been a problem. Colonel Lynch replied that there are probably 50 to 60 such situations per year.

Mr. Pate presented a general legislative proposal on salary equity for Marine Fisheries Inspectors. He stated that the Division needs to address salary inequities between its enforcement officers and the officers of other law enforcement agencies in order to retain trained, competent officers. Salaries for Marine Fisheries Inspectors are inadequate and inequities have not been addressed since 1995 when salaries were increased to keep pace with the salaries of highway patrol officers. Fourteen percent of the Division's Marine Fisheries Inspectors have left the Marine Patrol in the last 3 years in order to take higher paying positions.

Representative Wainwright asked Mr. Pate to provide salary comparisons between the Marine Patrol and law enforcement agencies in Craven and Carteret counties.

Representative Wainwright stated that Marine Patrol salaries should be increased to the levels of law enforcement agencies of neighboring local governments.

Representative Stiller thanked Mr. Pate for addressing this issue and the Co-chairs for following up on this issue from the Commission's October 2003 meeting. He asked whether anyone from around the State could apply for a Marine Patrol Position. Mr. Pate responded yes. Representative Stiller stated that the inadequate salaries should be addressed soon and asked that this be on the agenda of the Commission's next meeting.

Representative Wainwright stated that this issue and the federal deputization issue would be addressed at the next meeting of the Commission.

LUNCH BREAK – 12:15 – 1:30 PM. Senator Albertson called the meeting back to order and announced that in the essence of time, items VIII and IX would be removed from the agenda and the reports would be distributed to the members.

Mr. Pate presented a general legislative proposal for the creation of a violation points system for the revocation and suspension of marine fishing licenses.

Ms. West inquired about whether points would be assessed for "administrative" offenses. Mr. Pate responded that they would.

Representative Wainwright asked for clarification on what determines the class of each offense. Mr. Hudson explained that the class of each offense is established by the General Assembly in the General Statutes and the proposed violation points system assesses points based on these classes.

Senator Albertson recommended that Mr. Pate work with Commission staff to develop a specific legislative proposal for the Commission to review.

Mr. Pate introduced Ms. Sara Winslow, District Manager, Northern District, Division of Marine Fisheries in the Department of Environment and Natural Resources, who presented the Striped Bass Fishery Management Plan.

Representative Wainwright asked for time to review this document so that he could look into an issue brought to his attention by a constituent in New Bern.

Mr. Schill asked what was the most contentious issue associated with the FMP. Ms. Winslow explained that it was discard mortality.

Senator Albertson asked how much time and effort were involved in developing this FMP. Ms. Winslow stated that many individuals had spent countless hours working on the FMP during the last two years. Senator Albertson complimented the individuals involved on their hard work.

Mr. Blackerby, who Cochaired the Central Advisory Committee for the Striped Bass FMP, described the type and amount of work involved in developing the plan.

Representative Wainwright asked if the data in the report was correct. Ms. Winslow assured the Commission that the data was correct.

Staff distributed handouts of the Annual Report on Expenditure of Funds in the Shellfish Rehabilitation Program.

Staff distributed handouts on the Implementation of S.L. 2003-64 (Limit Shellfish Lease Area in Core Sound).

Mr. Mike Marshall, District Manager, Central Division, Division of Marine Fisheries in the Department of Environment and Natural Resources, presented a legislative proposal to implement the recommendations of the shellfish Fishery Management Plans. He explained that the fee increases were recommended by the State Auditor because the current aquaculture fees are not enough to support the shellfish lease program. Mr. Jeff Hudson, staff counsel made additional comments on collecting shellfishing data through licenses.

Mr. Brian Gillikan, Vice Chair of the Marine Fisheries Commission, spoke on the need to adequately fund the shellfish rehabilitation program. Senator Albertson asked how much money is needed for shellfish rehabilitation. Mr. Craig Hardee, Division of Marine Fisheries in the Department of Environment and Natural Resources, explained that the program probably needed an additional one hundred fifty thousand dollars (\$150,000) to bring cultch planting up to the historic levels of four hundred thousand (400,000) bushels per year. Representative Wainwright requested a draft proposal on funding the shellfish rehabilitation be prepared for the Commission's review.

Mr. Swartzenburg stated that the shellfish industry needs funding in order for it to grow and be profitable for North Carolina.

Dr. Charles (Pete) Peterson, Institute of Marine Sciences, UNC-Chapel Hill, presented information on the culture of non-native oysters in North Carolina.

Senator Albertson asked what has been done in the Chesapeake Bay that we are not doing. Dr. Peterson explained some differences between the experience in the Chesapeake Bay and North Carolina.

Ms. Ami Wilbur, Assistant Professor, UNC-Wilmington, presented information on the need for oyster research in North Carolina.

Senator Albertson asked how much it costs to breed oysters in a hatchery. Ms. Wilbur responded that it costs about \$2,000 per year. Mr. Pate responded that it would cost the State about one million two hundred thousand dollars (\$1,200,000) to build an oyster hatchery. Senator Albertson asked Mr. Pate to provide information on what the State could do to improve our oyster resources.

Mr. Gerry Smith told members that he agreed to serve on this Commission in 1993 and he feels that we need to take action on some critical issues and concerns. He will put his concerns in writing for the Commission's review. Representative Wainwright assured him that we will set aside some times to discuss his concerns.

Representative Stiller stated that we should look at what our neighboring states are doing to improve their fisheries.

Representative Wainwright announced that the next meeting of the Commission would be Wednesday, April 7, 2004 in Raleigh.

Mr. Pate thanked everyone for their attendance, interest, and help. He invited everyone to a seafood dinner provided by his staff at the Division's hangar.

Representative Wainwright thanked everyone.

There was no further business and the meeting adjourned at 4:56 p.m.

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

9:30 a.m. Wednesday, April 7, 2004
Room 544 Legislative Office Building

1. Call to order
Senator Charles Albertson, presiding
2. Introductory remarks by Cochairs
Senator Charles Albertson
Representative William Wainwright
3. Approval of minutes from the October 1, 2003 and March 2, 2004 meetings of the Commission
4. Annual report on the Fishery Resource Grant Program
Steve Rebach, Associate Director
North Carolina Sea Grant
5. Discussion of federal deputization of and dual office holding by Marine Fisheries Inspectors (legislative proposal)
Preston Pate, Director
Division of Marine Fisheries, DENR
6. Discussion of the establishment of a Violation Points System for the revocation and suspension of marine fishing licenses (legislative proposal)
Preston Pate, Director
Division of Marine Fisheries, DENR
7. Discussion of requiring Fishery Management Plans to achieve sustainable harvest rather than optimal yield and to specify a time period for ending overfishing and rebuilding the fishery (legislative proposal)
Louis Daniels, Executive Assistant for Councils
Division of Marine Fisheries, DENR
8. Discussion of recommendations of the Shellfish Fishery Management Plans (legislative proposal)
Mike Marshall, District Manager
Central District, Division of Marine Fisheries, DENR
9. Discussion of resources needed by the Division of Marine Fisheries for shellfish rehabilitation
Mike Marshall, District Manager
Central District, Division of Marine Fisheries, DENR

10. Discussion of resources needed by the Division of Marine Fisheries for the enforcement of marine fisheries laws
Preston Pate, Director
Division of Marine Fisheries, DENR
11. Commission discussion and announcements
12. Adjourn

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

9:30 a.m. Wednesday, April 7, 2004
Room 544 Legislative Office Building

The Joint Legislative Commission on Seafood and Aquaculture met at 9:30 a.m. on Wednesday, April 7, 2004, in Room 544 of the Legislative Office Building, Raleigh, North Carolina. The legislative members present were Representatives Wainwright, Hill, Gorman, and Stiller and Senators Albertson, Swindell and Sloan. Public members present were Mr. Schill, Mr. Daniels, Mr. Swartzenburg, Mr. Smith, Mr. Blackerby, Mr. Mayo, and Ms. West. Staff members present were Mr. Hudson, Mr. Givens, Mr. Dodge, Ms. McGinnis, and Ms. Davis.

Senator Albertson, presiding Cochair, called the meeting to order and welcomed members and guests.

Senator Sloan moved the adoption of the minutes. Mr. Smith made the correction that he was present at the October meeting but was not shown in attendance. Vote was taken and the motion passed.

Senator Albertson announced to the Commission that agenda item number 4, Annual Report on the Fishery Resource Grant Program, would be deferred until later in the meeting so that the Commission could proceed to agenda item number 5, discussion of federal deputization of and dual office holding by Marine Fisheries Inspectors.

Mr. Preston Pate, Director of Marine Fisheries of the Department of Environment and Natural Resources, addressed the Commission regarding the proposal to authorize federal deputization and dual office holding by Marine Fisheries Inspectors. He recognized and thanked Mr. Brian Gillikan, Mr. Rusty Russ, Mr. Jimmy Johnson, and Mr. B. J. Copeland, all members of the Marine Fisheries Commission, for being able to join the meeting. Mr. Pate reviewed the model Joint Enforcement Agreement, NOAA/North Carolina Joint Enforcement Agreement; Introductory Discussion "Strawman", so that the Commission could see what such an agreement between the State and the National Marine Fisheries Service might look like. He also reviewed the legislative proposal on federal deputization.

Senator Albertson recognized members of the public for their comments. Mr. Doug Roberts, a representative of the Eastern North Carolina Saltwater Fisheries Club, told members his organization fully supports the legislative proposal. Mr. Bob Pierce, Coastal Conservation Association of North Carolina, stated his organization's support of the legislative proposal. Mr. Dave Hawkins of Carteret County told the Commission that he sees federal deputization as a "win-win" situation and he supports it. Mr. Will Morgan, member of the Coastal Conservation Association of North Carolina, and Mr. Bill Mandulak, Chairman of the Coastal Conservation Association of North Carolina, offered their support. Mr. Terry Prat, Albemarle Fisheries Association, spoke against the legislative proposal.

Mr. Gerry Smith asked Mr. Pate what his officers could do under current law if they find illegal fish. Mr. Pate advised they could seize the fish and contact the National Marine Fisheries. Mr. Smith urged further consideration before moving forward with this legislative proposal, stating that the Marine Patrol currently has adequate tools for enforcement and additional study is necessary. Mr. Jerry Schill asked if additional enforcement authority will improve compliance. Mr. Pate responded that he thought the additional enforcement authority would be helpful. Mr. Blackerby asked if the extension of enforcement authority into the Exclusive Economic Zone would give the Division enforcement authority over out-of-state vessels. Mr. Pate said it would. Mr. Blackerby added that he didn't see how dual enforcement would affect vessels fishing out of North Carolina and he feels that this expansion of enforcement authority is primarily directed toward out-of-state vessels.

Representative Gorman stated that he supports the concept but would like to see more specifics. He feels the model Joint Enforcement Agreement has too many details left out such as the need for additional staff and their benefits. Mr. Pate explained that a completely developed Joint Enforcement Agreement would require more specifics and more time to develop. Representative Gorman thanked him for his hard work but would still be interested in reviewing the specifics of an agreement. Representative Wainwright asked Mr. Pate if we have the right type and number of boats to enforce the federal laws and can we rely on the federal government to purchase the necessary vessels? Mr. Pate responded that we do have boats capable of ocean patrol and that if the State enters into a Joint Enforcement Agreement, it will allow us to purchase the equipment necessary to carry out the agreement. Representative Wainwright wanted assurance that the State would not be assuming more responsibility than the federal government would be willing to fund. Mr. Pate assured him that the State wouldn't assume responsibilities beyond what the federal government is willing to fund. Representative Wainwright asked how long it would take to flesh out the details that Representative Gorman had asked about. Mr. Pate responded that it would take a couple of months.

Senator Albertson asked again if any state that has entered into this agreement has withdrawn. Mr. Pate advised that no states have withdrawn but some modifications had been made to agreements. Representative Stiller reminded members that North Carolina and Delaware are the only two states that have not entered into an agreement and that Mr. Hogarth had advised the Commission at its previous meeting that the states have the flexibility to withdraw at any time if they are not satisfied. He told members that the State doesn't have enough manpower to enforce all of its fisheries law and entering into an agreement will provide the State with one million five hundred thousand dollars (\$1,500,000). He feels this will be beneficial to everyone and encouraged all members to support it.

Mr. Jerry Schill asked staff about the provision in the Constitution of North Carolina that prohibits dual office holding and the policy behind it. Mr. Hudson explained that the provision is primarily designed to prohibit one person from holding numerous elected or appointed offices. It may not be implicated by federal deputization, but Division staff felt

that it might be and recommended that the statutory procedure in the legislative proposal be followed in order to avoid any potential problems. Mr. Schill recommended that the Commission not support federal deputization. Mr. Schill moved that the Commission disapprove the legislative proposal for federal deputization. Mr. Daniels seconded the motion. Representative Wainwright said that before the Commission rushed to judgment, some concerns need to be addressed. Senator Swindell made a substitute motion to approve the legislative proposal for recommendation to the 2004 Session. The motion was seconded. The vote was taken and division called by Representative Stiller. Senator Albertson called for a show of hands. There was a tie of 6 and 6 and Senator Albertson broke the tie by voting for Senator Swindell's motion. Representative Wainwright asked for a point-of-order and asked if another vote was necessary. Mr. George Givens explained there were no further votes necessary and the legislative proposal was approved and would be included as a recommendation in the Commission's Report.

Mr. Hudson walked the Commission through the legislative proposal to establish a violation points system for the suspension and revocation of marine fishing licenses. Ms. West requested clarification for a reference to a recreational license. Mr. Hudson explained that we do have one recreational license. Mr. Schill reminded members that this has been discussed for years because there were concerns with the proposal. He stated that the Division had addressed the concerns and he commended them. He then moved for adoption and recommendation of the legislative proposal. Mr. Smith seconded the motion. Senator Albertson complimented everyone for his or her hard work on this issue. The vote was taken and the motion passed.

Mr. Pate introduced Mr. Louis Daniels, Executive Assistant for Councils, Division of Marine Fisheries of the Department of Environment and Natural Resources to explain the need for requiring Fishery Management Plans to achieve sustainable harvest rather than optimal yield and to specify a time period for ending over fishing and rebuilding the fishery. Mr. Blackerby moved to adopt the legislative proposal and recommend it to the General Assembly. The vote was taken and the motion passed.

Mr. Hudson explained the portions of the legislative proposal to enact the recommendations of the Shellfish Fishery Management Plans that would establish a Recreational Shellfishing License. Mr. Mike Marshall, District Manager, Central District, Division of Marine Fisheries of the Department of Environment and Natural Resources explained the portions of the legislative proposal related to shellfish aquaculture. He noted that in an audit of the Division, the State Auditor had found that amount of the aquaculture leasing fees was not sufficient to support the leasing program. Representative Stiller asked if the proposal contained a twenty-five dollar (\$25) fee for the Recreational Shellfish License for non-residents. Mr. Marshall responded that that is the proposed fee for non-residents. Mr. Marshall reminded the Commission that the purpose behind the Recreational Shellfish License is information gathering. Mr. Pate added that he would support a sunset of the license in 3 years if it is found that the license isn't needed for information gathering. Representative Stiller wants to make sure this is done in a way that causes the least amount of impact to tourists. Mr. Pate explained that the license would be widely available through the Wildlife Resources Commission

licensing system. Due a transition in the Wildlife licensing system, Mr. Pate suggested delaying the effective date to July 1, 2005. Representative Stiller asked if recreational saltwater licenses would be helpful for data purposes. Mr. Marshall responded that it would. Mr. Schill then spoke on behalf of the NC Fisheries Commission and said they were not in favor of the Recreational Shellfishing License. He asked wouldn't a fee of ten dollars (\$10) or less be sufficient. Mr. Pate responded that he didn't object to reducing the non-resident fee to match the ten dollar (\$10) fee for residents.

Representative Stiller moved to amend the legislative proposal to delay the effective date to July 1, 2005 and provide for a sunset of July 1, 2008. Mr. Pate said he would support this. The vote was taken and the amendment adopted. Representative Stiller then moved to recommend the amended legislation proposal to the 2004 Session. Mr. Swartzenberg said that he didn't support changing the length of the leases, but did support the rest of the legislative proposal and seconded the motion. The vote was taken and the motion passed.

Agenda item number 4, Annual Report on the Fishery Resource Grant Program, had been deferred from earlier in the meeting. Mr. Steve Rebach, Associate Director, North Carolina Sea Grant presented the annual report on the Fishery Resource Grant Program. There were no questions or discussion.

Mr. Pate reported on the resources needed by the Division for shellfish rehabilitation. Mr. Rusty Russ, member of the North Carolina Marine Fisheries Commission, explained why adequate funding is important to the shellfish industry in North Carolina. Mr. Gerry Smith spoke in support of the budgetary recommendation. Senator Albertson spoke in support of the budgetary recommendation and suggested including it a recommendation to the 2004 Session. Representative Stiller also voiced support for the budgetary proposal. Staff recommended that if the Commission wanted to recommend this budgetary proposal to the 2004 Session, the Commission should vote on it. Mr. Smith moved the recommendation of the budgetary proposal to the 2004 Session. The vote was taken and the motion passed.

Mr. Pate reported on the resources needed by the Division for enforcement of marine fisheries laws. Mr. Pate reviewed a chart of resource needs. He noted that the Department of Environment and Natural Resources had already submitted its budget proposal to the Governor and he was hopeful that some of these needs would be addressed in the Governor's budget. Mr. Pate explained the need for adequate staffing levels. Representative Stiller expressed his support for the increases in funding for marine fisheries law enforcement. Senator Albertson expressed support for increasing the salaries of Marine Inspectors to the levels of law enforcement salaries in other agencies. Representative Stiller moved to recommend this budgetary proposal to the 2004 Session. The vote was taken and the motion passed.

Senator Albertson asked members to remember our servicemen fighting for our country. At our last meeting in Morehead Mr. Smith had told members he had some thoughts and concerns he would like to make known to the commission members. He had his comments distributed. Representative Stiller asked Senator Albertson if he could make a motion to reconsider the Shellfish FMP legislative proposal. The Commission voted to

reconsider the proposal. Representative Stiller then requested that the proposal be amended to reduce the non-resident fee for the Recreational Shellfishing License to ten dollars (\$10). A vote was taken and the amendment was passed. A second vote was taken to recommend the proposal, as amended. The recommendation passed. Mr. Jerry Schill made comments on discrepancies between the truck licenses for farmers and for fishermen. He asked staff to look into this for possible work in the 2005 General Assembly. Mr. Schill then expressed his concerns regarding confusion over the meeting schedule and whether votes would be taken at particular meetings. Senator Albertson explained that time was expiring for the Commission to make recommendations to the 2004 Session before it convened on May 10th. Mr. Schill said he understood the time constraints. Senator Albertson asked staff to prepare the Commission's Report to the 2004 Session based on the actions taken at this meeting. Representative Stiller asked whether the Commission would hold another meeting before the convening of the 2004 Session. Senator Albertson advised him that the Commission would not be holding another meeting.

There was no further business and the meeting adjourned at 12:45 p.m.

RECOMMENDATIONS

The Joint Legislative Commission on Seafood and Aquaculture recommends the following legislative proposals to the 2004 Regular Session of the 2003 General Assembly:

- Federal Enforcement by Marine Inspectors
- Est. Marine Fisheries Violation Points System
- Amend Fishery Management Plan Requirements
- Rec. Shellfish License/Amend Shellfish Laws

The Joint Legislative Commission on Seafood and Aquaculture recommends the following budgetary proposals to the 2004 Regular Session of the 2003 General Assembly:

- Provide funding to establish salary equity between Marine Inspectors and other State law enforcement officers and to hire additional Marine Patrol Staff
- Provide funding to implement the recommendations of the Oyster and Hard Clam Fishery Management Plans

The full text of each recommendation is included in the following pages.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

S

D

SENATE DRS85278-SBz-23* (12/15)

Short Title: Federal Enforcement by Marine Inspectors. (Public)

(Public)

Sponsors: Senator Albertson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW MARINE FISHERIES INSPECTORS TO ACCEPT
DELEGATION OF LAW ENFORCEMENT POWERS FROM THE NATIONAL
MARINE FISHERIES SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-134.1 reads as rewritten:

"§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic Ocean; delegation of law enforcement powers from the National Marine Fisheries Service.

(a) The Marine Fisheries Commission is directed to exercise all regulatory authority over the conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the State jurisdiction over the resources as now or hereafter defined. Marine fisheries inspectors may enforce these regulations and all other provisions of law applicable under the authority granted in this section in the same manner and with the same powers elsewhere granted them as enforcement officers.

(b) If authorized by the Fisheries Director or a designee of the Fisheries Director, an inspector may accept delegation of law enforcement powers from the National Marine Fisheries Service over matters within the jurisdiction of the Service. For purposes of this subsection, the office of inspector may be held concurrently with any other elected or appointed office, as authorized by G.S. 128-1.1 and Article VI, Section 9, of the North Carolina Constitution."

SECTION 2. This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

5

D

SENATE DRS35420-SBz-25* (3/17)

Short Title: Est. Marine Fisheries Violation Points System. (Public)

(Public)

Sponsors: Senator Albertson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A VIOLATIONS POINTS SYSTEM FOR THE SUSPENSION, REVOCATION, AND REISSUANCE OF MARINE FISHING LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-171 is repealed.

SECTION 2. Article 14A of Chapter 113 of the General Statutes is amended by adding a new section to read:

§ 113-171.2. Violation points system for the suspension, revocation, and reissuance of licenses.

Definitions. — As used in this section:

(1) "Commercial fishing license"

(1) Commercial fishing license means any license used to engage in a commercial fishing operation. A fish dealer license issued under G.S. 113-169.3 is not a commercial fishing license.

(2) "Conviction" means a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorable to the defendant after jeopardy has attached, any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial, or cases indefinitely continued upon arrest of judgment or prayer for judgment continued.

(3) "Fishery offense" means a criminal offense within the jurisdiction of the Division under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter.

(4) "License" means all licenses, assignments, endorsements, registrations and permits issued by the Division and the privilege to hold licenses, assignments, endorsements, registrations, and permits issued by the Division.

(5) "Licensee" means a person who holds a license issued under this Article.

(6) "Recreational fishing license" means a RCGL.

(7) "Reliable notice" means information furnished to the Fisheries Director in prosecution or other reports from inspectors.

(b) Duty to Revoke or Suspend Licenses. – Upon receipt of reliable notice that a licensee has had imposed against the licensee a conviction of a fisheries offense, the Fisheries Director shall suspend or revoke all licenses held by the licensee as provided in this section.

(c) Notice of Convictions. – The Fisheries Director shall initiate an administrative procedure designed to give the Fisheries Director reliable notice of all convictions of fisheries offenses by licensees.

(d) Assessment and Recordation of Points. – The Fisheries Director shall maintain a record of the convictions of fisheries offenses of each licensee. The Fisheries Director shall assess to the record of each licensee, as of the date of the commission of the fisheries offense, a number of points for each conviction as provided in the schedule set out in subsection (f) of this section. The Fisheries Director shall assess points for any conviction in which any of the following are the case:

(1) No notice of appeal has been given.

(2) The time for appeal has expired without an appeal having been perfected.

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(e) Designation of Fisheries Offenses and Multiple Offenses. – The Fisheries Director shall designate in the record whether a fisheries offense was related to commercial fishing activity or recreational fishing activity. The Fisheries Director shall designate in the record whether a fisheries offense was related to the harvest of fish or the sale of fish. These designations are within the sole discretion of the Fisheries Director. Where several convictions for fisheries offenses result from a single transaction or occurrence, the licensee shall be assessed for one fisheries offense only and if the fisheries offenses have different point values, the licensee shall be assessed for the fisheries offense having the greater point value.

(f) Violation Points Schedule. – The Fisheries Director shall assess points for convictions of fisheries offenses as follows:

<u>(1)</u>	<u>Felony</u>	<u>36 points.</u>
<u>(2)</u>	<u>Class A1 misdemeanor</u>	<u>12 points.</u>
<u>(3)</u>	<u>Class 1 misdemeanor</u>	<u>10 points.</u>
<u>(4)</u>	<u>Class 2 misdemeanor</u>	<u>6 points.</u>
<u>(5)</u>	<u>Class 3 misdemeanor</u>	<u>3 points.</u>

(g) General Revocation and Suspension Schedule. – Except as provided in subsections (h) and (i) of this section, the Fisheries Director shall suspend or revoke all of the licenses held by a licensee as follows:

1 (1) The assessment of 18 to 25 points within a three-year period shall
2 result in a 30-day suspension.
3 (2) The assessment of 26 to 35 points within a three-year period shall
4 result in a six-month suspension.
5 (3) The assessment of 36 or more points within a three-year period shall
6 result in a minimum one-year revocation. Where 36 or more points
7 have been assessed within a three-year period, the Fisheries Director
8 may, in the Director's sole discretion, revoke all of the licenses of a
9 licensee for a specified period of time greater than one year or may
10 permanently revoke all of the licenses of a licensee.

11 (h) Limitation on Revocation and Suspension Based on Type of Fishery Offense.

12 - The Fisheries Director shall suspend or revoke a recreational fishing license based
13 only on points assessed for fisheries offenses related to recreational fishing activity. The
14 Fisheries Director shall suspend or revoke a commercial fishing license based only on
15 points assessed for fisheries offenses related to commercial fishing activity. The
16 Fisheries Director shall suspend or revoke a SCFL or RSCFL based only on points
17 assessed for fisheries offenses related to the harvest of fish. The Fisheries Director shall
18 suspend or revoke a fish dealer license based only on points assessed for fisheries
19 offenses related to the sale of fish, unless the holder of the fish dealer license was
20 clearly in collusion or in a conspiracy with fishermen to commit fisheries offenses
21 related to commercial fishing activity.

22 (i) Specific Revocation and Suspension Requirements Based on Type of Fishery
23 Offense. - Except where subsection (g) of this section would result in a longer
24 suspension or revocation and as provided in subsection (h) of this section, the Fisheries
25 Director shall suspend or revoke all of the licenses held by a licensee as follows:

26 (1) The Fisheries Director shall suspend for 30 days all of the licenses of a
27 licensee who has either of the following:
28 a. Second conviction of refusal to stop for an inspector.
29 b. Second conviction of refusal to obey or allow inspection by an
30 officer.
31 (2) The Fisheries Director shall suspend for six months all of the licenses
32 of a licensee who has any of the following:
33 a. Second conviction of taking fish or possession of commercial
34 quantities without holding the proper commercial licenses.
35 b. Second conviction of selling fish without the proper license.
36 c. Second conviction for abandoning gear.
37 d. First conviction of robbing, stealing, or willfully injuring gear.
38 (3) The Fisheries Director shall revoke for one year all of the licenses of a
39 licensee who has any of the following:
40 a. First conviction of assault upon a governmental official or law
41 enforcement officer as a result of the performance of duties
42 related to marine fisheries.
43 b. Second conviction of taking shellfish from a temporarily closed
44 polluted area.

- c. Second conviction of using prohibited gear in a Primary Nursery Area.
 - d. Second conviction of robbing, stealing, or willfully injuring gear.
 - e. Third conviction for abandoning gear.
 - f. Three suspensions in one, three-year period.
 - g. Conviction of a criminal offense covered by subsection (a) of this section during a period of suspension.
- (4) The Fisheries Director shall revoke for two years all of the licenses of a licensee who has any of the following:
 - a. Second conviction of assault upon a governmental official or law enforcement officer as a result of the performance of duties related to marine fisheries.
 - b. First conviction of taking shellfish from a permanently closed area.
 - c. Third conviction of taking shellfish from a temporarily closed polluted area.
 - d. Third conviction of selling fish without the proper license.
 - e. Fourth conviction of purchasing fish without a proper license for the sale of those fish or purchasing fish from a seller who does not posses a proper license for the sale of those fish.
 - f. Third conviction for using prohibited gear in a Primary Nursery Area.
 - g. Third conviction of robbing, stealing, or willfully injuring gear.
 - h. Third conviction of refusal to obey or allow inspection by an officer.
 - i. Third conviction of refusal to stop for an inspector.
 - j. Third conviction of taking fish or possession of commercial quantities of fish without proper commercial licenses.
- (5) The Fisheries Director shall permanently revoke all of the licenses of a licensee who has any of the following:
 - a. Third conviction of assault upon a governmental official or law enforcement officer as a result of the performance of duties related to marine fisheries.
 - b. Second conviction of taking shellfish from a permanently closed area.
 - c. Fourth conviction of taking shellfish from a temporarily closed polluted area.
 - d. Fourth conviction of selling fish without the proper license.
 - e. Fifth conviction of purchasing fish without a proper license for the sale of those fish or purchasing fish from a seller who does not posses a proper license for the sale of those fish.
 - f. Fourth conviction of using prohibited gear in a Primary Nursery Area.

- 1 g. Third conviction of robbing, stealing, or willfully injuring gear.
- 2 h. Fourth conviction of refusal to obey or allow inspection by an
- 3 officer.
- 4 i. Fourth conviction of refusal to stop for an inspector.
- 5 j. Fourth conviction for abandoning gear.
- 6 k. Fourth conviction of taking fish or possession of commercial
- 7 quantities without proper commercial licenses.

8 (j) Conviction During Revocation. – Conviction of a fishery offense during a
9 period of revocation shall extend the period of revocation by one year.

10 (k) Assignment and Transfer. – Except as provided by rules adopted by the
11 Commission pursuant to this subsection, any assignment or transfer made from the time
12 of the offense that triggered a suspension or revocation to the end of the period of
13 suspension or revocation is void. The Commission may adopt rules to allow the transfer
14 of a suspended or revoked pound net permit.

15 (l) Cancellation of Points. – Upon revocation of a license, the assessed points
16 that resulted in the revocation shall be cancelled and removed from the former licensee's
17 record. Upon suspension of a license, one-half of the assessed points that resulted in the
18 suspension, rounded down, shall be cancelled and removed from the former licensee's
19 record.

20 (m) Reissuance. – Where a commercial fishing license has been suspended or
21 revoked, the former licensee is not eligible to apply for the reissuance of the license or
22 to apply for the issuance of a different type of commercial fishing license during the
23 period of suspension or revocation. Where a recreational fishing license has been
24 suspended or revoked, the former licensee is not eligible to apply for the reissuance of
25 the license or to apply for the issuance of a different type of recreational fishing license
26 during the period of suspension or revocation. Where a license has been suspended, the
27 Fisheries Director shall return the license to the former licensee at the end of a period of
28 suspension. Where a commercial fishing license has been revoked for a specified period
29 of time, the former licensee is not eligible to apply for the reissuance of the license or to
30 apply for the issuance of a different type of commercial fishing license until six months
31 following the end of the period of revocation. Where a recreational fishing license has
32 been revoked for a specified period of time, the former licensee is not eligible to apply
33 for the reissuance of the license or to apply for the issuance of a different type of
34 recreational fishing license until six months following the end of the period of
35 revocation. Where a commercial fishing license has been permanently revoked, the
36 former licensee is not eligible to apply for the reissuance of the license or to apply for
37 the issuance of a different type of commercial fishing license until at least six years
38 following the end of the period of revocation. Where a recreational fishing license has
39 been permanently revoked, the former licensee is not eligible to apply for the reissuance
40 of the license or to apply for the issuance of a different type of recreational fishing
41 license until at least six years following the end of the period of revocation. Where a
42 license has been revoked, the former licensee shall satisfy the Fisheries Director that the
43 licensee will strive in the future to conduct the operations for which the license is sought
44 in accord with all applicable laws and the Fisheries Director, in the Director's sole

1 discretion, may issue one license sought but not another, as deemed necessary to
2 prevent the hazard of recurring violations of the law.

3 (n) Notice of Suspension or Revocation. – Upon a determination that suspension
4 or revocation is required by subsection (g) or (i) of this section, the Fisheries Director
5 shall promptly cause the licensee to be personally served with written notice of
6 suspension or revocation. Where the licensee is not an individual, the written notice
7 may be served upon any responsible individual affiliated with the corporation,
8 partnership, or association. The notice of suspension or revocation may be served by an
9 inspector or other agent of the Division, shall state the ground upon which it is based,
10 and take effect within 10 days of service, as specified in the notice. The agent of the
11 Fisheries Director making service shall collect all license certificates, license plates, and
12 other forms or records relating to the license as directed by the Fisheries Director. It is
13 unlawful for any licensee willfully to evade the personal service prescribed in this
14 subsection.

15 (o) Administrative Review for Suspension or Revocation. – A licensee served
16 with a notice of suspension or revocation may obtain an administrative review of the
17 suspension or revocation by filing a petition for a contested case under G.S. 150B-23
18 within 20 days after receiving the notice. The only issue in the hearing shall be whether
19 the licensee was convicted of the criminal offense on which the suspension or
20 revocation is based. A license remains suspended or revoked pending the final decision
21 by the Fisheries Director.

22 (p) Administrative Review for Reissuance. – If the Fisheries Director refuses to
23 reissue a license or issue an additional license to an applicant whose license was
24 revoked, the applicant may contest the decision by filing a petition for a contested case
25 under G.S. 150B-23 within 20 days after the Fisheries Director makes the decision. The
26 Commission shall make the final agency decision in a contested case under this
27 subsection. An applicant whose license is denied under this subsection may not reapply
28 for the same license for at least six months.

29 (q) The Commission may adopt rules to provide for the disclosure of the identity
30 of any individual or individuals in responsible positions of control respecting operations
31 of any licensee that is not an individual. For the purposes of this section, individuals in
32 responsible positions of control are deemed to be individual licensees subject to the
33 suspension and revocation requirements of this section with regard to any applications
34 for license they may make either as individuals or as persons in responsible positions of
35 control in any corporation, partnership, or association. In the case of individual
36 licensees, the individual applying for a license or licensed under this Article shall be the
37 real party in interest."

38 **SECTION 3.** G.S. 113-277(a3) reads as rewritten:

39 "(a3) As used in this Article, the term "conviction" has the same meaning assigned
40 to it in G.S. 113-171.G.S. 113-171.2."

41 **SECTION 4.** This act becomes effective December 1, 2004, and applies to
42 offenses committed on or after that date. Suspensions and revocations for offenses
43 committed before the effective date of this act are not abated or affected by this act, and

1 the statutes that would be applicable but for this act remain applicable to those
2 suspensions and revocations.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

5

D

SENATE DRS35421-SBz-27* (3/30)

Short Title: Amend Fishery Management Plan Requirements. (Public)

(Public)

Sponsors: Senator Albertson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE FISHERY MANAGEMENT PLANS TO ACHIEVE SUSTAINABLE HARVEST RATHER THAN OPTIMAL YIELD AND TO SPECIFY A TIME PERIOD FOR ENDING OVERFISHING AND REBUILDING THE FISHERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-129(12a) is repealed.

SECTION 2. G.S. 113-129(12b) reads as rewritten:

"(12b) Overfishing or overfished. – A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield/sustainable harvest on a continuing basis."

SECTION 3. G.S. 113-129 is amended by adding a new subdivision to read:

"(14a) Sustainable harvest. – The amount of fish that:

a. Will provide the greatest overall benefit to the State, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems:

b. Is prescribed on the basis of preventing recruitment overfishing and ensuring that the age structure of the population is maintained or, in the case of growth overfished stocks, rebuilt; and

c. In the case of an overfished fishery, provides for rebuilding to a level consistent with producing sustainable harvest in the fishery."

SECTION 4. G.S. 113-182.1(b) reads as rewritten:

"(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be

1 designed to reflect fishing practices so that one plan may apply to a specific fishery,
2 while other plans may be based on gear or geographic areas. Each plan shall:

- 3 (1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.
- 4 (2) Recommend management actions pertaining to the fishery or fisheries.
- 5 (3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the ~~optimal yield~~sustainable harvest from each fishery.
- 6 (4) For a fishery that is overfished, specify a time period, not to exceed 10 years from the date of the adoption of the plan, for ending overfishing and rebuilding the fishery, except in cases where the biology of the stock of fish or environmental conditions make the rebuilding of the fishery within 10 years impracticable.

7 **SECTION 5.** G.S. 113-182.1(g) reads as rewritten:

8 "(g) To achieve ~~optimal yield~~sustainable harvest under a Fishery Management Plan, the Marine Fisheries Commission may include in the Plan a recommendation that the General Assembly limit the number of fishermen authorized to participate in the fishery. The Commission may recommend that the General Assembly limit participation in a fishery only if the Commission determines that ~~optimal yield~~sustainable harvest cannot otherwise be achieved. In determining whether to recommend that the General Assembly limit participation in a fishery, the Commission shall consider all of the following factors:

- 9 (1) Current participation in and dependence on the fishery.
- 10 (2) Past fishing practices in the fishery.
- 11 (3) Economics of the fishery.
- 12 (4) Capability of fishing vessels used in the fishery to engage in other fisheries.
- 13 (5) Cultural and social factors relevant to the fishery and any affected fishing communities.
- 14 (6) Capacity of the fishery to support biological parameters.
- 15 (7) Equitable resolution of competing social and economic interests.
- 16 (8) Any other relevant considerations."

17 **SECTION 6.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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D

SENATE DRS15211-SBfz-24* (12/22)

Short Title: Rec. Shellfish License/Amend Shellfish Laws. (Public)

Sponsors: Senator Albertson.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A RECREATIONAL SHELLFISH LICENSE, TO AMEND
3 THE STATUTES GOVERNING THE CULTIVATION OF SHELLFISH, AND TO
4 AUTHORIZE THE MARINE FISHERIES COMMISSION TO STUDY ISSUES
5 RELATED TO THE CULTIVATION OF SHELLFISH.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 113-168 is amended by adding a new subdivision to read:
8 "(7a) 'RSL' means Recreational Shellfish License."

9 **SECTION 2.** G.S. 113-168.1(a) reads as rewritten:

10 "(a) Duration, Fees. – Except as provided in G.S. 113-173(f), G.S. 113-173(f) and
11 G.S. 113-174(e), all licenses and endorsements issued under this Article expire on the
12 last day of the license year. An applicant for any license or endorsement shall pay the
13 full annual fee at the time the applicant applies for the license or endorsement regardless
14 of when application is made."

15 **SECTION 3.** G.S. 113-168.1(f) reads as rewritten:

16 "(f) License Issuance and Renewal. – Except as provided in G.S. 113-173(d), G.S.
17 113-173(d) and G.S. 113-174(c), the Division shall issue licenses and endorsements
18 under this Article to eligible applicants at any office of the Division or by mail from the
19 Morehead City office of the Division. A license or endorsement may be renewed in
20 person at any office of the Division or by mail to the Morehead City office of the
21 Division. Eligibility to renew an expired SCFL shall end one year after the date of
22 expiration of the SCFL."

23 **SECTION 4.** G.S. 113-169.2 reads as rewritten:

24 "**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

25 "(a) License or Endorsement Necessary to Take or Sell Shellfish. – Requirement.
26 It is unlawful for an individual to take shellfish from the public or private grounds of
27 the State by mechanical means or in quantities greater than the personal use limits set

1 ~~forth in subsection (i) of this section by any means as part of a commercial fishing~~
2 ~~operation~~ without holding either a shellfish license or a shellfish endorsement of a
3 SCFL. A North Carolina resident who seeks only to take and sell shellfish shall be
4 eligible to obtain a shellfish license without holding a SCFL. The shellfish license
5 authorizes the licensee to sell shellfish.

6 (b) Repealed by Session Laws 1998-225, s. 4.17.

7 (c) Fees. – Shellfish licenses shall be issued annually upon payment of a fee of
8 twenty-five dollars (\$25.00) upon proof that the license applicant is a North Carolina
9 resident.

10 (d) License Available for Inspection. – It is unlawful for any individual to take
11 shellfish ~~in quantities greater than the personal use limits set forth in subsection (i) of~~
12 ~~this section~~ from the public or private grounds of the State ~~as part of a commercial~~
13 ~~fish~~ ~~operation~~ without having ready at hand for inspection a current and valid
14 shellfish license issued to the licensee personally and bearing the licensee's correct
15 name and address. It is unlawful for any individual taking or possessing freshly taken
16 shellfish to refuse to exhibit the individual's license upon the request of an officer
17 authorized to enforce the fishing laws.

18 (e) Repealed by Session Laws 1998-225, s. 4.17.

19 (f) Name or Address Change. – In the event of a change in name or address or
20 upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply
21 for a replacement shellfish license bearing the correct name and address. Upon a
22 showing by the individual that the name or address change occurred within the past 30
23 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this
24 subsection.

25 (g) Transfer Prohibited. – It is unlawful for an individual issued a shellfish
26 license to transfer or offer to transfer the license, either temporarily or permanently, to
27 another. It is unlawful for an individual to secure or attempt to secure a shellfish license
28 from a source not authorized by the Commission.

29 (h) Exemption. – Persons under 16 years of age are exempt from the license
30 requirements of this section if accompanied by a parent, grandparent, or guardian who is
31 in compliance with the requirements of this section or if in possession of a parent's,
32 grandparent's or guardian's shellfish license.

33 (i) ~~Taking Shellfish Without a License for Personal Use.~~

34 (1) ~~A person may take shellfish for personal use without obtaining a~~
35 ~~license under this section in quantities up to:~~

- 36 a. ~~One bushel of oysters per day.~~
- 37 b. ~~One half bushel of scallops per day.~~
- 38 c. ~~One hundred clams per day.~~
- 39 d. ~~Ten conchs per day.~~
- 40 e. ~~One hundred mussels per day.~~

41 (2) ~~Two or more persons who are using a vessel to take shellfish may take~~
42 ~~shellfish for personal use without obtaining a license under this section~~
43 ~~in quantities up to:~~

- 44 a. ~~Two bushels of oysters per day.~~

- b. One bushel of scallops per day.
- c. Two hundred clams per day.
- d. Twenty conchs per day.
- e. Two hundred mussels per day."

SECTION 5. G.S. 113-173(j)(4) is repealed.

SECTION 6. Article 14A of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-174. Recreational Shellfish License.

(a) License Required. – Except as provided in subsection (i) of this section, it is unlawful for any person to take or attempt to take shellfish for personal use in coastal fishing waters without holding a RSL. As used in this section, shellfish are taken for personal use if the shellfish are not taken for the purpose of sale. The RSL entitles the licensee to take shellfish for personal use subject to the following possession limits:

(1) A person holding a RSL may take shellfish for personal use in quantities up to:

- a. One bushel of oysters per day.
- b. One-half bushel of scallops per day.
- c. One hundred clams per day.
- d. Ten conchs per day.
- e. One hundred mussels per day.

(2) Two or more persons, one of whom holds a RSL, who are using a vessel to take shellfish for personal use may take shellfish for personal use in quantities up to:

- a. Two bushels of oysters per day.
- b. One bushel of scallops per day.
- c. Two hundred clams per day.
- d. Twenty conchs per day.
- e. Two hundred mussels per day.

(b) Sale of Fish Prohibited. – It is unlawful for the holder of a RSL or for a person who is exempt under subsection (i) of this section to sell fish taken under the RSL or pursuant to the exemption.

(c) Purchase; Renewal. – A RSL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RSL may be renewed by mail.

(d) Replacement RSL. – The provisions of G.S. 113-168.1(h) apply to this section.

(e) Duration; Fees. – The RSL shall be valid for a one-year period from the date of purchase. The fee for a RSL shall be ten dollars (\$10.00).

(f) RSL Available for Inspection. – It is unlawful for any person to take or attempt to take shellfish for personal use in coastal fishing waters without having ready at hand for inspection a valid RSL. A holder of a RSL shall not refuse to exhibit the RSL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

1 (g) Assignment and Transfer Prohibited. – A RSL is not transferable. Except as
2 provided in subsection (i) of this section, it is unlawful to buy, sell, lend, borrow, assign,
3 or otherwise transfer a RSL, or to attempt to buy, sell, lend, borrow, assign, or otherwise
4 transfer a RSL.

5 (h) Reporting Requirements. – The holder of a RSL shall comply with the
6 biological data sampling and survey programs of the Commission and the Division.

7 (i) Exemption. – A person who is under 16 years of age may take shellfish for
8 personal use in coastal fishing waters without holding a RSL if the person is
9 accompanied by a parent, grandparent, or guardian who holds a valid RSL or if the
10 person has in the person's possession a valid RSL issued to the person's parent,
11 grandparent, or guardian."

12 SECTION 7. G.S. 113-201 reads as rewritten:

13 **"§ 113-201. Authority** Legislative findings and declaration of policy; authority of
14 Marine Fisheries Commission.

15 (a) The General Assembly finds that shellfish cultivation provides increased
16 seafood production and long-term economic and employment opportunities. The
17 General Assembly also finds that shellfish cultivation provides increased ecological
18 benefits to the estuarine environment by promoting natural water filtration and
19 increased fishery habitats. The General Assembly declares that it is the policy of the
20 State to encourage the development of private, commercial shellfish cultivation in ways
21 that are compatible with other public uses of marine and estuarine resources such as
22 navigation, fishing, and recreation.

23 (b) The Marine Fisheries Commission is empowered to make rules and take all
24 steps necessary to develop and improve the cultivation, harvesting, and marketing of
25 shellfish in North Carolina both from public grounds and private beds.

26 (c) The Marine Fisheries Commission shall adopt rules to establish training
27 requirements for persons applying for new shellfish cultivation leases. These training
28 requirements shall be designed to encourage the productive use of shellfish cultivation
29 leases. Training requirements established pursuant to this subsection shall not apply to
30 an applicant who applies for a new shellfish cultivation lease if, at the time of the
31 application, the applicant holds one or more shellfish cultivation leases and all of the
32 leases meet the shellfish production requirements established by the Marine Fisheries
33 Commission."

34 SECTION 8. G.S. 113-202(d) reads as rewritten:

35 "(d) Any person desiring to apply for a lease must make written application to the
36 Secretary on forms prepared by the Department containing such information as deemed
37 necessary to determine the desirability of granting or not granting the lease requested.
38 Except in the case of renewal leases, the application must be accompanied by a map or
39 diagram made at the expense of the applicant, showing the area proposed to be leased.

40 (d1) The map or diagram must conform to standards prescribed by the Secretary
41 concerning accuracy of map or diagram and the amount of detail that must be shown. If
42 on the basis of the application information and map or diagram the Secretary deems that
43 granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in
44 the case of initial lease applications, must order an investigation of the bottom proposed

1 to be leased. The investigation is to be made by the Secretary or his authorized agent to
2 determine whether the area proposed to be leased is consistent with the standards in
3 subsection (a) of this section and any other applicable standards under this Article and
4 the rules of the Marine Fisheries Commission. In the event the Secretary finds the
5 application inconsistent with the applicable standards, the Secretary shall deny the
6 application or propose that a conditional lease be issued that is consistent with the
7 applicable standards. In the event the Secretary authorizes amendment of the
8 application, the applicant must furnish a new map or diagram meeting requisite
9 standards showing the area proposed to be leased under the amended application. At the
10 time of making application for an initial lease, the applicant must pay a filing fee of ~~one~~
11 hundred dollars (\$100.00)~~two hundred dollars (\$200.00)~~.

12 **SECTION 9.** G.S. 113-202(j) reads as rewritten:

13 "(j) Initial leases begin upon the issuance of the lease by the Secretary and expire
14 at noon on the first day of ~~April~~July following the ~~tenth~~fifth anniversary of the
15 granting of the lease. Renewal leases are issued for a period of ~~40~~five years effective
16 from the time of expiration of the previous lease. At the time of making application for
17 renewal of a lease, the applicant must pay a filing fee of ~~fifty dollars (\$50.00)~~one
18 hundred dollars (\$100.00). The rental for initial leases is one dollar (\$1.00) per acre for
19 all leases entered into before July 1, 1965, and for all other leases until noon on the first
20 day of ~~April~~July following the first anniversary of the lease. Thereafter, for initial
21 leases entered into after July 1, 1965, and from the beginning for renewals of leases
22 entered into after said that date, the rental is ~~five dollars (\$5.00)~~ten dollars (\$10.00) per
23 acre per year. Rental must be paid annually in advance prior to the first day of April
24 each year. Upon initial granting of a lease, the pro rata amount for the portion of the
25 year left until the first day of ~~April~~July must be paid in advance at the rate of one dollar
26 (\$1.00) per acre per year; then, on or before the first day of April next, the lessee must
27 pay the rental for the next full year."

28 **SECTION 10.** G.S. 113-202(l) reads as rewritten:

29 "(l) Upon receipt of notice by the Secretary of any of the following occurrences,
30 he must commence action to terminate the leasehold:

- 31 (1) Failure to pay the annual rent in advance.
- 32 (2) Failure to file information required by the Secretary upon annual
33 remittance of rental or filing false information on the form required to
34 accompany the annual remittance of rental.
- 35 (3) Failure by new owner to report a transfer of beneficial ownership of all
36 or any portion of or interest in the leasehold.
- 37 (4) Failure to mark the boundaries in the leasehold and to keep them
38 marked as required in the rules of the Marine Fisheries Commission.
- 39 (5) Failure to utilize the leasehold on a continuing basis for the
40 commercial production of shellfish.
- 41 (6) Transfer of all or part of the beneficial ownership of a leasehold to a
42 nonresident.

- (7) Substantial breach of compliance with the provisions of this Article or of rules of the Marine Fisheries Commission governing use of the leasehold.
- (8) Failure to comply with the training requirements established by the Marine Fisheries Commission pursuant to G.S. 113-201(c).

(11) The Marine Fisheries Commission is authorized to make rules defining commercial production of shellfish, based upon the productive potential of particular areas climatic or biological conditions at particular areas or particular times, availability of seed shellfish, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of shellfish harvested. Provided, however, that if a lessee has made a diligent effort to effectively and efficiently manage his lease according to accepted standards and practices in such management, and because of reasons beyond his control, such as acts of God, such lessee has not and cannot meet the requirements set out by the Marine Fisheries Commission under the provisions of this paragraph of this subsection, his leasehold shall not be terminated under subdivision (5) of this subsection subsection (1) of this section."

SECTION 11. G.S. 113-202.1(d) reads as rewritten:

"(d) Amendments of shellfish cultivation leases to authorize use of the water column are issued for a period of five years or the remainder of the term of the lease, whichever is shorter. The annual rental for ~~an initiala new or renewal~~ water column amendment is one hundred dollars (\$100.00) an acre for each of the first four years for which the amendment is issued and five hundred dollars (\$500.00) an acre for the fifth year for which the amendment is issued. The annual rental for a renewed water column amendment is five hundred dollars (\$500.00) an acre. If a year for which a water column amendment is issued is for less than a 12-month period, the rental for that year shall be prorated based on the number of months remaining in the year. The annual rental for an amendment is payable at the beginning of the year. The rental is in addition to that required in G.S. 113-202."

SECTION 12. The Marine Fisheries Commission may study whether and how to establish a process by which shellfish cultivation leases that are terminated pursuant to G.S. 113-202(l) may be leased to an applicant for a shellfish cultivation lease without the leasehold reverting to public bottom. If the Commission conducts a study pursuant to this section, it shall report its findings, recommendations, and legislative proposals, if any, to the Joint Legislative Commission on Seafood and Aquaculture no later than December 1, 2004.

SECTION 13. The Marine Fisheries Commission may study issues related to the corporate ownership of shellfish cultivation leases. If the Commission conducts a study pursuant to this section, it shall report its findings, recommendations, and legislative proposals, if any, to the Joint Legislative Commission on Seafood and Aquaculture no later than December 1, 2004.

SECTION 14. Sections 7, 10, 12, 13, and 14 of this act are effective when this act becomes law. Sections 8, 9, and 11 of this act become effective July 1, 2004. Sections 1 through 6 of this act become effective July 1, 2005, and expire July 1, 2008.

To: Jeff Hudson
From: Col. J.T. Lynch
Re: Cost Breakdown By Title
Date: 03/31/04

Listed below are breakdown costs to increase marine patrol salaries as requested by Representative Wainwright. Costs are broken down for the Salary Equity With Wildlife Officers legislative proposal, and for the Interim Law Enforcement Pay Plan submitted to DENR:

<u>Title/Rank</u>	<u>Salary Equity w/Wildlife Officers</u>	<u>Interim LE Pay Plan</u>
Officer I	\$ 75,179.60	\$ 94,774.68
Officer II	\$ 20,454.71	\$ 43,742.16
Officer III	\$ 179,183	\$ 94,337.08
Corporal	\$ 3,455	\$ 7,290.36
Sergeant	\$ 26,164	\$ 34,073.52
Warrant Officer (Pilot)	\$ 12,655	\$ 14,580.72
Chief Warrant Officer (Chief Pilot)	\$ 5,967	\$ 7,290.36
Lieutenant	\$ 24,537	\$ 16,000.26
Captain	\$ 19,630	\$ 20,376.10
Major	license receipts	license receipts
Colonel	<u>\$ 12,978</u>	<u>\$ 7,290.36</u>
 Appropriation Funded		
Total	\$ 380,203.31	\$ 339,755.60
 License Receipt Funded	 Nine (9) Positions \$ 44,465.60	 Nine (9) Positions \$ 59,860.80

ADDITIONAL MARINE PATROL STAFF

As the amount of polluted shellfish area in North Carolina increases, patrol of these areas continues to be a high priority for thinly spread marine patrol officers. North Carolina presently has 364,607 acres of polluted shellfish water permanently closed to the harvest of shellfish, an increase of almost 600 acres over the past four years. The Food and Drug Administration (FDA) mandates a certain level of polluted shellfish area patrol in order for North Carolina shellfish to be marketed outside the state. The failure of Marine Patrol to maintain the required level of patrol could have severe consequences for the North Carolina shellfish industry as well as the health of the shellfish consuming public.

Marine Patrol currently has five (5) 26' and two (2) 25' patrol vessels in the field. These vessels should be staffed by two officers while patrolling the large sounds and ocean but are often operated with only one officer aboard due to inadequate staffing. Patrols at night in remote areas are best done in pairs for safety reasons, but due to minimal staffing, they are usually done alone. These situations raise serious safety concerns that can be addressed with increased staff.

A number of patrol territories are exceptionally large for one officer to handle and could be more effectively patrolled if two officers were assigned or if the territories were divided in two.

At present it is estimated that there are over 250 Standard Commercial Fishing License (SCFL) and Recreational Commercial Gear License (RCGL) holders, and over 31,000 recreational fishermen per marine patrol officer. These numbers create a substantial workload. If a salt water recreational fishing license is ever required in North Carolina, the additional responsibility to ensure compliance will increase that workload dramatically.

From 1990 to 2000, the population in the North Carolina coastal counties increased over 16%. Although more recent figures are not available, I think it is safe to assume an increased growth in population along the coast for the foreseeable future. With an increase in population comes an increase in fishing activity and, subsequently, more work for the limited number of marine patrol officers scattered along the coast.

In 1997 the DMF was charged with developing fisheries management plans (FMP) for a number of marine species. Thus far five (5) FMPs have been completed (river herring, red drum, inter jurisdictional fisheries, oysters, clams), five (5) are being developed (southern flounder, mullet, striped bass, shrimp, blue crab), and five (5) will be done in the future (kingfish, sea trout, perch, catfish, bay scallops). As each FMP is developed and implemented, more marine patrol officer involvement is needed.

Marine Patrol is responsible for marine fisheries enforcement statewide. But because of limited staffing, complaints of violations inland such as undersized fish, untagged shellfish, or illegal sale of certain seafood products go largely unanswered.

03/31/04

ADDITIONAL MARINE PATROL OFFICERS (continued)

In the year 2001, Marine Patrol was reduced by two positions due to budget constraints. One was a field officer position and one was an headquarters administrative lieutenant. The loss of the administrative lieutenant has imposed an unrealistic work load on the field operations major, who must now spend valuable field time doing the administrative work formerly done by the lieutenant. And certain duties, such as research and development, don't get done at all due to higher priority issues.

The Marine Patrol 24 hour/7 day a week communications center has attempted to operate for years with four dispatchers and a supervisor. Experience, and comparisons with similar operations in the state, indicate a need for a minimum of five (5) full time dispatchers and a supervisor. In our present understaffed state, continuous schedule modifications occur to accommodate leave, unexpected illness, and routine operations. But even with these modifications, the communications center must occasionally shut down due to lack of staff. Further, dispatchers accumulate an inordinate amount of compensation leave, which exacerbates the situation when taken, and overtime pay. Continuous schedule modifications interfere with planned off-duty time with families, and unexpected overtime expenses can negatively impact the operating budget. We have used part time employees, cross trained secretarial staff, and cross trained marine patrol officers to provide temporary relief but the only way to solve the problem is to hire an additional dispatcher.

To correct the deficiencies cited, and to enhance the abilities of Marine Patrol to safely and effectively carry out their responsibilities to enforce marine fisheries laws and protect the public health, one (1) administrative lieutenant, seven (7) new field officer positions, and one (1) new communications dispatcher position are needed.

The costs for these nine (9) positions will be \$ 792,789.

03/31/04

FUNDING NEEDED TO FULFILL RECOMMENDATIONS IN THE OYSTER AND HARD CLAM FMPS

PRIORITY	MANAGEMENT ACTION	BUDGET CODE	YEAR 1	YEAR 2	YEAR 3	YEAR 4
3	Increase Cultch Planting in Hand Harvest Areas	13203302	\$50,000	\$50,000	\$50,000	\$50,000
2	Restore Cultch Planting Efforts to 400,000 bu. per Year	13203302	\$150,000	\$150,000	\$150,000	\$150,000
3	Enhance Clam Habitat by Planting Shell Material	13203302	\$150,000	\$150,000	\$150,000	\$150,000
3	Plant Seed Beds for use in Private Shellfish Culture	13203302	\$50,000	\$50,000	\$50,000	\$50,000
3	Fund Human use Mapping of Coastal Waters	13203304	\$133,333	\$133,333	\$133,333	
3	Oyster Sanctuary Construction/Research	13203302	<u>\$321,507</u> \$69,257 Sal. \$252,250 Op. 2 positions	<u>\$221,507</u> \$69,257 Sal. \$152,250 Op.	\$221,507	\$221,507
1	Increase Shellfish Mapping Program	13203305	<u>\$386,538</u> \$128,538 Sal. \$258,000Op. 4 positions	<u>\$217,538</u> \$128,538Sal \$89,000 Op.	\$217,538	\$217,538
1	Fund Shellfish Population Assessment Staff	13203350	<u>\$553,821</u> \$277,021Sal. \$276,800Op. 8 positions	<u>\$396,621</u> \$277,021Sal. \$119,600Op.	\$396,621	\$396,621
1	Conduct Research on Bottom Disturbing Gear Effects on Shellfish Habitat	13203350	\$100,000	\$100,000	\$100,000	
3	Increase Shellfish Sanitation capability to respond to temporary shellfish area closures. (DEH)	14954951	<u>\$235,000</u> \$75,000 Sal. \$160,000 Op. 2 positions	<u>\$125,000</u> \$75,000 Sal. \$50,000 Op.	\$125,000	\$125,000
	TOTALS		\$2,130,199	\$1,593,999	\$1,593,999	
2	University Based Shellfish Hatchery, Research and Education Center	Capital	See attached			

Priority 1: Recommendations that prevent overfishing and provide for stock assessments to determine Optimum Yield

Priority 2: Recommendations that rebuild the stocks and provide for production of the Optimum Yield

Priority 3: Recommendations to improve shellfish harvesting and support private culture

University Based Shellfish Hatchery, Research and Education Center

A capital improvement project that will provide a state owned and operated shellfish hatchery is estimated to require funding between \$ 1.5 million and \$ 3.0 million excluding the purchase of suitable waterfront property. The range in the cost estimate is due to unknown needs for complexity and capacity of the facility that can best be assessed by experts in shellfish hatchery research. Multiple quarantined systems for handling nonnative oysters and oyster disease resistance research would greatly increase the complexity and cost of the facility. There should be a broad-based planning effort involving in-state academic institutions and expertise from similar facilities in other states if this recommendation is adopted

The purpose of the hatchery and related facilities is to provide a hardy stock of shellfish to rebuild wild shellfish populations (along with habitat restoration) and support the shellfish culture industry. To fulfill this purpose the facility should be designed to provide large numbers of seed shellfish for enhancement of wild populations and as a seed source for shellfish culturists. The facility will also serve as a training center to pass new technologies in shellfish breeding and production on to North Carolina's shellfish industry.

A highly trained and responsive staff will be required to ensure the maximum benefit is realized from the facility. The research and development portion of the hatchery may best be staffed through the University System with the production and physical operations of the facility staffed through the Division of Marine Fisheries. Estimated minimum staff would be six fulltime employees with additional researchers and temporary staff during periods of high production.

